

## **REMARKS**

### **Amendments**

The features of claims 4 and 36 are incorporated into claim 2, and in addition, amendments are made to claim 2 in view of the disclosure of the description on line 29, page 17 to line 1, page 18, and lines 7-21, page 19. Support for the negative limitation can be also found therein. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977).

### **The Rejection Under 35 USC § 103**

Rejections are made over Shioya, US 5,144,054, in view of Sakuta, WO 01/92375, which is equivalent to US 6,747,115, and also over the same references in further view of Harai, EP 0350951.

The polyglycerol having an alkenyl group cited in claim 2 has two or three alkenyl groups  $R^3$ . Therefore, the organopolysiloxane polymer of the presently claimed invention is obtained by reacting these alkenyl groups  $R^3$  with organohydrogen polysiloxane. A three-dimensional cross-linking structure is formed with this reaction wherein the polyglycerol is linked to two or three silicon atoms through an alkylene group.

This cross-linking type organopolysiloxane polymer is characterized by swelling up by containing at least its own weight of a liquid oil selected from hydrocarbon oil, ester oil, natural animal and vegetable oils and semi-synthetic oil ...

Regarding Shioya, US 5,144,054, the siloxane derivative described therein is not a three-dimensional cross-linking type but a straight chain type, which is completely different from the polysiloxane polymer of the presently claimed invention in their structures, does not swell by containing oil and does not form a pasty composition.

As is clear from the formula (I) and (II), the siloxane derivative described in Shioya, wherein a glycerol is linked to only one silicon atom through an alkylene group, is not cross-linked by the glycerol.

Regarding Sakuta, US'6, 747,115, a cross-linking type organopolysiloxane described in Sakuta is a polyether-modified organopolysiloxane, which is different from the cross-linking type organopolysiloxane of the presently claimed invention in its structure.

Furthermore, the polyglycerol-modified cross-linking type organopolysiloxane polymer of the presently claimed invention has more excellent usability than polyether-modified cross-linking type organopolysiloxane of this reference, which is clear from the

results of Table 2, page 49 of present specification.

The Office Action on page 10, alleges that the results of Table 2 are subjective and lack a reasonable level of scientific objectivity. However, as disclosed the tests were carried out by a panel of fifty women (see line 11, page 48 to line 2, page 49). Therefore, this test results have sufficient objectivity and there is no basis for the allegation.

Regarding Harai, EP 0 350 951, polyglyceroldiallylether and diglyceroldiallylether are cited as constituents of a silicone rubber adhesive agent. However, acryl-functional or methacryl-functional silane coupling agent of component (D) and epoxy-functional silane coupling agent of component (E), which are not used for the organopolysiloxane polymer of the present invention as a component, are essential. Therefore, the present invention is different from the invention of Harai in the technical concept of the invention. As such, one of ordinary skill in the art would not have selected these two specific components from among others and apply them to a different invention altogether.

In addition, Harai teaches an adhesive agent. Therefore, it is impossible for one of ordinary skill in the art to believe or even contemplate that an adhesive agent hardened material is required to swell by containing an oil. The environments of the differing uses of the present invention and the embodiments of Harai are different, and as such, one of ordinary skill in the art would not have found a reason to, e.g., contact the adhesive of Harai with an oil. Accordingly, there is no motivation or reason for one of ordinary skill in the art to provide Harai with the requirement of "swelling by containing its own weight or more of a liquid oil" as in the presently claimed invention.

In Harai, partial allyl ether of polyalcohol is added to give tackiness to the uncured adhesive agent (lines 6-9, page 4, '951). However, the organopolysiloxane polymer of the presently claimed invention has the effect of having non-tackiness when it is applied to the cosmetic material (see, e.g., lines 20-22, page 75, of the specification), which is an opposing effect to the case of Harai. This is also proved by the description in the examples of lines 12 and 13, page 44, line 29, page 45 to line 1, page 46 etc..

As discussed above, polyglyceroldiallylether etc. are added in order to increase tackiness of adhesive agents in Harai. Therefore, there is no motivation in the direction of the present invention aimed at reducing tackiness by combining polyglyceroldiallylether etc., which is described as giving tackiness in Harai.

For all the foregoing, reconsideration is respectfully and courteously solicited.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Csaba Henter/

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Attorney Docket No.:TAKIT-196

Date: December 18, 2009

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